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Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 CR 482 (JSR)

5 PETER G. JOHNSON, PETER B.
6 JOHNSON and THOMAS REICH,

7 Defendant.

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8 New York, N.Y.
9 August 11, 2017
10 2:00 p.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 JOON H. KIM

16 Acting United States Attorney for the
Southern District of New York

17 BENET KEARNEY

Assistant United States Attorney

18 CRITCHLEY KINUM VAZQUEZ

19 Attorneys for Defendant Peter G. Johnson

20 MICHAEL CRITCHLEY

AMY LURIA

21 STONE CONROY LLC

22 Attorneys for Defendant Peter B. Johnson

23 SHALOM D. STONE

24 FASULO BRAVERMAN & DIMAGGIO

Attorneys for Defendant Reich

25 SAM BRAVERMAN

RICHARD POTTER

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1 (Case called)

2 THE COURT: Now, I prefer of course to keep counsel in
3 the case and I understand that you may have a trial in Nevada.
4 Although, to be frank, many cases plead out and the statistics
5 are 97 percent of all federal cases plead out. Therefore, the
6 chances statistically of your trial going forward in Nevada is
7 three percent. But I am willing to work with you and -- the
8 trial will end the end of February, is that the estimate?

9 MS. LURIA: No. I think it will end at probably the
10 middle of March.

11 THE COURT: I thought you told me it was four weeks.

12 MS. LURIA: Starting at the end of February, your
13 Honor. I apologize.

14 THE COURT: Then we're back to a January date. You
15 know I'm only joking. I'm half serious.

16 MS. LURIA: I understand.

17 THE COURT: If it was taking up February I was going
18 to work with you and give you a late March date but I'm not
19 going to give you a May date. I've never given a criminal
20 case, including far more complicated cases than this, anything
21 like that. And in my mind it's totally inconsistent with the
22 Speedy Trial Act.

23 MR. STONE: May I suggest that we assume statistically
24 that it's unlikely the trial will go as long as Ms. Luria
25 appears it will and that we stick with your Honor's generous

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1 offer of a March date.

2 THE COURT: All right. I could, but remember it's
3 going to be firm, fixed and final and that means if you have to
4 divide your forces or do whatever you have to do you are going
5 to have to do it because when I set a date it is firm.

6 MS. LURIA: Your Honor, if you do set a March date, we
7 would ask that it not be the first week in March.

8 THE COURT: I'm going to give you a late March date.

9 MS. LURIA: Thank you.

10 THE COURT: So let's just look at the calendar.

11 Since the reporter's still not here --

12 MS. LURIA: No, no. She's here.

13 MR. STONE: She's here. we're on the record.

14 THE COURT: Nevertheless, I'm going to go get my
15 personal calendar. We'll continue this discussion on the
16 record.

17 (Case called)

18 MS. KEARNEY: Good afternoon.

19 Benet Kearney, for the United States. I'm joined at
20 counsel table by Special Agent Branden Racz.

21 THE COURT: Good afternoon.

22 MS. LURIA: Good afternoon, your Honor.

23 Amy Luria, of the firm of Critchley Kinum. With me to
24 my right is my client, Peter G. Johnson.

25 THE COURT: Good afternoon.

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1 MR. STONE: Good afternoon, your Honor.

2 Shalom Stone, with me is client, Peter B. Johnson

3 THE COURT: Good afternoon.

4 MR. POTTER: Good afternoon, your Honor.

5 My name is Richard Potter. Here with me is Thomas
6 Reich, present to my right.

7 THE COURT: Good afternoon.

8 MR. BRAVERMAN: Sam Braverman, with my associate Mike
9 Giordano. We are joining the trial team for Mr. Reich. I've
10 already filed my notice of appearance.

11 THE COURT: Good afternoon. Please be seated.

12 Now, my understanding is the defendants were presented
13 but not arraigned; is that right?

14 MS. KEARNEY: That's correct.

15 THE COURT: OK. Have all defendants read and have
16 counsel discussed with them the indictment?

17 MS. LURIA: Yes, your Honor, for my client.

18 MR. STONE: Yes, your Honor, on behalf of my client.

19 MR. BRAVERMAN: Yes, your Honor, on behalf of
20 Mr. Reich.

21 THE COURT: And would you like the indictment read
22 again here in open court or do you waive the public reading?

23 MS. LURIA: We waive the public reading, your Honor.

24 MR. STONE: We waive public reading, your Honor.

25 MR. POTTER: We waive public reading, your Honor.

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1 THE COURT: And would you like a plea of not guilty
2 entered at this time?

3 MS. LURIA: Yes, we would, your Honor, on behalf of
4 Peter G. Johnson.

5 MR. STONE: Yes, your Honor, on behalf of Peter B.
6 Johnson.

7 MR. POTTER: Yes, your Honor on behalf of Thomas
8 Reich.

9 THE COURT: All right. A plea of not guilty will be
10 entered for all three defendants.

11 How long does the government want to complete
12 discovery?

13 MS. KEARNEY: Your Honor, we made an initial
14 production immediately before this proceeding consisting of
15 some documents, some of the defendant's statements and some, if
16 you will, highlight reel of some e-mail correspondence. We
17 will be requesting two weeks to complete our production of the
18 more fulsome database of documents which amounts to over a
19 million documents.

20 THE COURT: So two weeks strikes me as reasonable but
21 in light of the volume of the discovery I will in violation of
22 all my principles give you three weeks for completion of
23 discovery.

24 MS. KEARNEY: And we appreciate that.

25 Thank you.

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1 THE COURT: So discovery will be completed by
2 September 1.

3 How long do counsel want for the making of any
4 motions? So let me give you a hint. I normally give two
5 weeks. Since I've broken down and given the government three
6 weeks, I would normally give you three weeks. If there's some
7 unusual reason why you need more time than that I will hear you
8 now.

9 MR. BRAVERMAN: Judge, I have a trial before Judge
10 Sibel. Is it possible that we could have something in the
11 first week of October which would be time to --

12 THE COURT: You are co-counsel, are you not?

13 MR. BRAVERMAN: Yes, sir, I am.

14 THE COURT: So your other counsel can take care of
15 this. That's not in my mind a valid reason.

16 Yes.

17 MR. STONE: Mr. Johnson, my client has not yet decided
18 he is going to retain me for further proceedings.

19 THE COURT: You are his lawyer and he is stuck with
20 you unless he wants to go to a pro se except upon further order
21 of the Court.

22 MR. STONE: I understand, your Honor. I'm mentioning
23 as an issue --

24 THE COURT: And if new counsel comes in, new counsel
25 will be governed by the dates we set today. So no one should

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1 retain new counsel if that counsel doesn't tell the client
2 upfront that he or she is prepared to meet the schedule that we
3 are setting today.

4 MR. STONE: Thank you, your Honor.

5 THE COURT: You are welcome.

6 MS. LURIA: Your Honor, it's more of a question for
7 the government which is how difficult it would be for us when
8 we get the rather large production to upload it onto a database
9 and access it because that, your Honor, could be a challenge on
10 our end for being able to review the documents.

11 THE COURT: Well, that's a fair statement. And of
12 course, I know the government will make every effort to be sure
13 you get indices that you get pointed towards documents that
14 particularly relate to your clients but you're right, there are
15 other logistics involved, so what about that?

16 MS. KEARNEY: My understanding is the documents will
17 be produced in a format that is ready to be load onto a review
18 platform. As the documents are being processed by the vendor
19 we can initiate the conversation about exactly what capability
20 if any review platform would need to have so that hopefully
21 with not to much delay. Given that our vendor will take
22 several weeks to process, I think it may be a fair assessment
23 that we'll take at least several days to get something up onto
24 another review vendor.

25 MS. LURIA: Your Honor, I would agree with the

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1 government with regard to that but it may take a week or even
2 longer to get it up and running without any glitches. While I
3 know the government will make every effort to make this a
4 smooth process. Having dealt with vendors over the years, I
5 know that sometimes glitches occur with regard to technology.
6 So I would simply ask that your Honor stretch beyond a two or
7 three week period to allow us time --

8 THE COURT: Well, glitches and technological glitches
9 of course occur in my experience they usually occur during
10 counsel's summations. But all right, so how long do you want?

11 MS. LURIA: I mean, I think I would ask for six weeks,
12 your Honor.

13 THE COURT: I'm not going to give you six weeks. But
14 let me go back to counsel who wanted, you wanted what, first
15 week of October?

16 MR. BRAVERMAN: That would be great, judge.

17 THE COURT: All right. That's five weeks.

18 MS. LURIA: Thank you, your Honor.

19 THE COURT: So all motions must be filed by October 6.
20 And we will have a further conference on October 10 at four
21 p.m. At that time if motions have been made, they can be dealt
22 with orally. They will be. If the motions require written
23 response, we'll set the date then for the written response and
24 the date for any hearings if there are any evidentiary hearings
25 that need to be held.

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1 Now, let's talk about a trial date. I should reflect
2 that prior to going on the record the Court has suggested a
3 date of December 11. Counsel asked for a very brief addition
4 to that, until the end of March or so.

5 Having now looked at my other proceedings and matters
6 that I have, I'm willing to give you until April 10. I want
7 the assurance here in open court because that is much later
8 than this Court had in mind, that no one, no counsel -- and
9 this includes any successive counsel -- will seek any further
10 adjournment of that date on any ground, whatsoever, barring an
11 act of God. So do I have the government's assurance?

12 MS. KEARNEY: Yes. That date's fine for the
13 government.

14 MS. LURIA: Yes, your Honor.

15 MR. STONE: Yes, your Honor.

16 MR. POTTER: Yes, your Honor.

17 MR. BRAVERMAN: Yes, your Honor.

18 THE COURT: All right. Very good. So we will set
19 this down for nine a.m. on April 10.

20 MS. KEARNEY: Perhaps I pulled up the wrong screen on
21 my calendar but I believe that's a Tuesday.

22 THE COURT: I'm sorry. I'm looking at the wrong --
23 It's April 9. Thank you very much. But actually, why don't we
24 make it April 10, a Tuesday and you'll tell you why. Because
25 we can have a conference on April 9 and deal with any pretrial

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1 matters and any motions in limine and stuff like that. So we
2 will convene on April 9 at nine o'clock but the trial and
3 selection of the jury will start at nine o'clock on April 10.

4 You want to give me a ballpark as to how long you
5 think the trial is going to be.

6 MS. KEARNEY: I think two to three weeks, your Honor.

7 THE COURT: Is that all right with counsel?

8 MR. BRAVERMAN: In the absence of having seen the
9 discovery, seems like a reasonable estimation.

10 THE COURT: It'll go until it's completed but I just
11 wanted to get a rough idea.

12 MR. BRAVERMAN: I can't imagine if the government's
13 case is two to three weeks, if the defense put on a case it
14 would be longer than a week it's unlikely.

15 THE COURT: Right. So I will put aside four weeks.
16 If it's a longer than that, so be it. My experience is frankly
17 it usually goes shorter than what people imagine.

18 So pursuant to Section 3161 of Title 18, I will
19 exclude from calculations under the Speedy Trial Act all time
20 between now and April 10, finding that such time is necessary
21 for the review of the voluminous discovery, the making of
22 motions, the determination of motions, preparation for trial
23 and also because counsel had shared with me prior to going on
24 the record that several of them had other trial commitments
25 that also warrant this execution.

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1 So for those and other reasons, the best interests of
2 justice excluding such time substantially outweighs the
3 interests of the public and the defendants in a speedy trial.

4 anything else we need to take up today?

5 MS. KEARNEY: Nothing from the government.

6 MS. LURIA: Nothing, your Honor, from here.

7 MR. STONE: Nothing, your Honor.

8 MR. POTTER: No, your Honor.

9 MR. BRAVERMAN: No, sir.

10 THE COURT: Very good. Thanks.

11 (Adjourned)